

03:14:36 1

IN THE UNITED STATES DISTRICT COURT

2

IN AND FOR THE DISTRICT OF DELAWARE

3

- - -

4

SZ DJI TECHNOLOGY CO., LTD. and

DJI EUROPE B.V,

: CIVIL ACTION

:

5

Plaintiffs,

:

v

:

6

:

AUTEL ROBOTICS USA LLC, AUTEL

:

7

AERIAL TECHNOLOGY CO. LTD. And AUTEL

:

INTELLIGENT TECHNOLOGY CO., LTD.,

:

8

: NO. 16-706-LPS

Defendants.

9

- - -

10

Wilmington, Delaware

Thursday, May 25, 2017

11

Telephone Conference

12

- - -

13

BEFORE: HONORABLE LEONARD P. STARK, Chief Judge

14

APPEARANCES:

- - -

15

RICHARDS LAYTON & FINGER, LLP

16

BY: KELLY E. FARNAN, ESQ., and

CHRISTINE D. HAYNES, ESQ.

17

and

18

ANOVA LAW GROUP, LLP

19

BY: DAVID M. FARNUM, ESQ., and

SHERRY X. WU, ESQ.

20

(Sterling, Virginia)

21

Counsel for Plaintiff

22

YOUNG CONAWAY STARGATT & TAYLOR, LLP

23

BY: ANNE SHEA GAZA, ESQ., and

ROBERT M. VRANA, ESQ.

24

and

25

Brian P. Gaffigan

Registered Merit Reporter

1 APPEARANCES: (Continued)

2 STEPTOE & JOHNSON, LLP

3 BY: JOHN CARACAPPA, ESQ., and
4 SCOTT M. RICHEY, ESQ., and
(Washington, District of Columbia)

5 Counsel for Defendants

6
7
8
9
10 - oOo -

11 P R O C E E D I N G S

12 (REPORTER'S NOTE: The following telephone
02:19:12 13 conference was held in chambers, beginning at 2:34 p.m.)

02:22:20 14 THE COURT: Good afternoon, everybody. This is
02:34:07 15 Judge Stark. Who is there, please?

02:34:10 16 MS. FARNAN: Good afternoon, Your Honor. This
02:34:12 17 is for the plaintiffs Kelly Farnan and Christine Haynes from
02:34:17 18 Richards Layton & Finger; and we have our co-counsel, Sherry
02:34:20 19 Wu and David Farnum from Anova Law.

02:34:23 20 THE COURT: Okay.

02:34:24 21 MS. GAZA: Good afternoon, Your Honor. It's
02:34:25 22 Anne Gaza and Rob Vrana from Young Conaway on behalf of the
02:34:30 23 Autel defendants. We're joined today by John Caracappa and
02:34:33 24 Scott Richey of Steptoe & Johnson.

02:34:37 25 MR. CARACAPPA: Good afternoon, Your Honor.

02:34:38 1 THE COURT: Good afternoon. I have my court
02:34:40 2 reporter here with me. For the record, it is our case of SZ
02:34:43 3 DJI Technology Company Limited, et al versus Autel Robotics
02:34:48 4 USA, LLC, et al, Civil Action No. 16-706-LPS-CJB.

02:34:56 5 I have set this call because we have the
02:34:58 6 preliminary injunction hearing still scheduled on our calendar
02:35:02 7 for next Thursday for June 1st, but I know there have been
02:35:07 8 requests to move it and we have been unable, through informal
02:35:14 9 efforts, to figure out a date I guess that works for both
02:35:17 10 sides and me, so I'm not sure what to do about that and
02:35:21 11 thought we might as well just have a conversation about it.
02:35:24 12 So why don't I hear from the plaintiffs what you propose we
02:35:28 13 do.

02:35:29 14 MR. FARNUM: Sure. Your Honor, this is David
02:35:33 15 Farnum for DJI.

02:35:36 16 So I think our feeling on this is initially
02:35:41 17 Autel has, through this process, contacted us about a
02:35:48 18 continuance. And we were willing to agree to a short one,
02:35:51 19 subject to working it out with the Court's schedule, and it
02:35:53 20 seems at this point all we have been able to do at best is
02:35:56 21 get some dates the following week that are sort of pencilled
02:35:59 22 in, so to speak, and my clients are concerned obviously that
02:36:02 23 if things don't work out, then we have no idea how long this
02:36:05 24 may take.

02:36:06 25 So we're prepared to go forward next week. I

1 think that this is maybe -- I'm not sure exactly what
2 Autel's position is at this point as to whether they
3 wouldn't be able to go forward next week or if they have to
4 have a continuance or where they currently stand on that.
5 It depends.

6 Like I said, we certainly don't want this
7 hearing to be pushed off very far. We're willing to be
8 reasonable to some extent here. But if we are going to pen
9 in a date into July or August or something like that, I
10 don't think that is, given the nature of the hearing, the
11 preliminary injunction would be fair to our client.

12 THE COURT: Right. And, Mr. Farnum, what is
13 your sense at the moment as to how long a time this hearing
14 should take? And are you anticipating presenting any live
15 witnesses or evidence?

16 MR. FARNUM: We're not currently anticipating
17 presenting live witnesses, given that Autel was not either.
18 They can certainly address that. So as a result, I don't
19 -- I think this hearing is probably on the order of two to
20 three hours at the most.

21 THE COURT: Okay. Thank you. We'll come back
22 to you, but let me hear from Autel at this point what your
23 position is.

24 MR. CARACAPPA: Thank you, Your Honor. So with
25 respect to the time for the hearing, we don't think it will

02:37:36 1 last longer than two hours as well. We don't plan on
02:37:39 2 calling any witnesses.

02:37:41 3 This started at my request. I got married two
02:37:44 4 weeks ago. I have plans with my wife to take her away
02:37:48 5 starting that Thursday. I asked plaintiffs for a short
02:37:53 6 postponement in the hearing, and that is where we are.

02:37:57 7 It seems like they have agreed but they don't
02:37:59 8 want it to go too far, which we certainly understand.

02:38:02 9 THE COURT: All right. Well, congratulations,
02:38:04 10 first of all.

02:38:05 11 So the hearing will be two hours. We'll give
02:38:09 12 an hour to each side. And we won't have any live witnesses.
02:38:14 13 So that much is established.

02:38:17 14 June 1st, I take it. And that was Mr. Caracappa
02:38:23 15 speaking; is that right?

02:38:25 16 MR. CARACAPPA: Yes, Your Honor. I apologize.
02:38:27 17 It was.

02:38:27 18 THE COURT: That's okay. At this point, it
02:38:31 19 would require you to change your plans with your wife if we
02:38:34 20 were to go ahead with the hearing at 10:00 o'clock next
02:38:37 21 Thursday and have you out of here by 12:30, let's say?

02:38:43 22 MR. CARACAPPA: It would require me to change my
02:38:45 23 plans, but I can certainly do it if the Court has no other
02:38:48 24 time available.

02:38:48 25 THE COURT: Well, the situation is that I have

02:38:56 1 this -- I have hearings all day the following Monday and
02:39:02 2 Tuesday, and I don't even know when you are back. And then
02:39:06 3 I have a criminal trial scheduled for the 7th, 8th, and 9th,
02:39:12 4 criminal trial. I've got the pretrial conference actually
02:39:16 5 now not until well into next week. You never know, of
02:39:21 6 course, if that trial is going to happen. The defendant
02:39:24 7 right now says it's going to happen. And even though it is
02:39:28 8 scheduled for three days, it could end up taking two, two
02:39:31 9 and-a-half days or we might be able to do a two-hour hearing
02:39:35 10 while the jury is deliberating, but I can't make you any
02:39:37 11 promises on the 7th, 8th, 9th. And then the following two
02:39:44 12 weeks are consecutive patent trials that to all appearances
02:39:48 13 at least are going to happen. And that takes us to the last
02:39:52 14 week of June. And we've got hearings and other events 26th,
02:40:00 15 27th. And so realistically the earliest I could give you a
02:40:06 16 date that I am highly confident I could stick to would be
02:40:12 17 the morning of June 28th.

02:40:15 18 So I guess that raises a question for Mr.
02:40:20 19 Farnum. What do you think of Wednesday, June 28th?

02:40:26 20 MR. FARNUM: To speak frankly, Your Honor, I
02:40:31 21 think that is a lot longer than my client would like. You
02:40:34 22 know, if you are obviously inclined to grant the continuance
02:40:37 23 and give us the date, then that would be the date that we
02:40:40 24 have. But that is certainly much longer than we would want.

02:40:43 25 THE COURT: Right. Okay. Mr. Caracappa, do you

02:40:46 1 have any response or anything you want to add?

02:40:51 2 MR. CARACAPPA: No, Your Honor. I understand
02:40:52 3 the plaintiffs' position and nothing else to add at this
02:40:56 4 point.

02:40:57 5 THE COURT: Well, I guess the only other
02:40:59 6 question, we had proposed sort of having you all on standby
02:41:04 7 for some portion of the trial, the criminal trial currently
02:41:11 8 scheduled 7th, 8th and 9th. I don't have in front of me
02:41:15 9 where you are all coming from. Is that impractical,
02:41:20 10 Mr. Farnum, from your side?

02:41:24 11 MR. FARNUM: No. I mean assuming we could have
02:41:27 12 a date in advance, Your Honor, or is that something you
02:41:30 13 maybe know that morning?

02:41:35 14 THE COURT: I'm not sure, but I might, I might
02:41:37 15 be able to answer that. But, Mr. Caracappa, is that
02:41:41 16 unworkable on your end?

02:41:43 17 MR. CARACAPPA: No, that is workable, Your
02:41:45 18 Honor. We're in DC, so we can hop on a train the second you
02:41:48 19 tell us we have to be there.

02:41:49 20 THE COURT: Well, here is what occurs to me. I
02:41:54 21 might make people in the building unhappy, but I'm going to
02:41:58 22 let my jury go at 4:30. I mean if we're really only talking
02:42:01 23 about a two-hour hearing, we could go ahead and schedule
02:42:04 24 this for the 7th, 8th, or 9th say at 4:30. And if my trial
02:42:12 25 ends early that day or, you know, doesn't happen, we could

try to move it to a more reasonable time if we can get you enough notice.

If I were to go in that direction, which of the 7th, 8th, or 9th, if any, works out best for the plaintiffs?

MR. FARNUM: So if you want to go that way, Your Honor, any of those days would work. If you were -- you know, I don't know, obviously the 7th still works for Autel. It might make sense to plan on doing that on the 7th. That would be fine by us, assuming the Court is willing to go later in the day, which we would greatly appreciate, of course.

THE COURT: Mr. Caracappa, are you back from the vacation by the 7th?

MR. CARACAPPA: I am only gone for four days, Your Honor. I am back and I am flexible on all three of those dates, yes.

THE COURT: All right. Well, then maybe we have a solution here. I think we should reschedule this hearing for June 7th at 4:30. If say my trial goes away, we'll just reach out to you and see if you want to move it to a different time or possibly to the 8th or the 9th. But on the assumption nothing changes with my trial calendar, we'll see you on the 7th at 4:30.

Are there any questions about that from plaintiffs?

MR. FARNUM: No. No. Thank you for helping us

02:43:41 1 resolve this, Your Honor.

02:43:42 2 THE COURT: Okay. And from defendants?

02:43:44 3 MR. CARACAPPA: Your Honor, I thank both the
02:43:46 4 Court and DJI's counsel. No questions.

02:43:51 5 THE COURT: All right. Have a nice trip, and we
02:43:53 6 will see you all on the 7th. Good-bye.

02:43:56 7 (Telephone conference ends at 2:43 p.m.)

02:44:08 8

02:44:08 9 I hereby certify the foregoing is a true and accurate
transcript from my stenographic notes in the proceeding.

10

11

/s/ Brian P. Gaffigan
Official Court Reporter
U.S. District Court

12

13

14

15

16

17

18

19

20

21

22

23

24

25